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The Law Commission

Working Paper No 54

Criminal Law

Offences of Entering and Remaining on Property

28 June 1974

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The Law Commission will be grateful for comments before 1 January 1975

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OFFENCES OF ENTERING AND REMAINING ON PROPERTY

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I. INTRODUCTION

1. The Lord Chancellor, acting under section 3(1)(e) of the Law Commissions Act 1965, asked us originally to examine the Statutes of Forcible Entry 1381-1623 and relevant common law offences and to recommend legislation appropriate to modern conditions to replace the present law in regard to forcible entry and detainer. In particular we were required to carry out this examination "in the light of the Government's decision not to create at that stage an offence of criminal trespass".

2. After we had started work on this examination there were two developments which, taken together, have had a bearing upon our consideration of the subject. First, the Working Party which is assisting us with the general part of the criminal law has reached the provisional conclusion that the offence of conspiracy should be limited to conspiracy to commit a crime.[1] Secondly, the decision of the House of Lords in Kamara & Others v. Director of Public Prosecutions[2] has established that a conspiracy to trespass is in certain circumstances a criminal conspiracy, although a trespass by one person in otherwise similar circumstances would not be criminal.

3. We recognise[3] that before the provisional proposals of the Working Party can be implemented it will be necessary to

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1. Working Paper No. 50, para. 14.
2. [1973] 3 W.L.R. 198.
3. Working Paper No. 50, Introduction, para. 4.

consider to what extent it may be necessary to create offences to cover acts which at present are not criminal when done by one person, but to which criminal liability is attracted when there is a conspiracy to commit them. The decision in Kamara shows that there is such a situation in the field of trespass. With these considerations in mind we thought that an enquiry now directed solely towards the subject of forcible entry and detainer would be of very limited usefulness. Accordingly we obtained wider terms of reference to enable us to consider the broader questions, and our terms of reference are now "to examine the Statutes of Forcible Entry 1381-1623 and relevant common law offences, and to consider in what circumstances entering or remaining upon property should constitute a criminal offence or offences and in what form any such offence or offences should be cast".

4. In considering the present criminal law relating to entering or remaining on property it is important to remember that, with some statutory exceptions, trespass upon property is not a criminal offence. The statutory exceptions are, in the main, of two types. In the one type of case the law penalises trespass upon particular property, such as railway property[4], or an enclosed garden set aside in a public place for the inhabitants[5]. In the second type of case the law penalises trespass on property with a prescribed end in view, such as the committing of theft or rape, or the inflicting of grievous bodily harm[6], or the pursuit of game[7]. A further exception

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4. Railway Regulation Act 1840, s. 16. The penalty is a fine of £5. See too British Railways Act 1965, s. 35(6) which provides for a fine of £25.

5. Town Gardens Protection Act 1863, s. 5. The penalty is a fine of £2 or 14 days' imprisonment, and the section gives a police constable power to arrest a person he sees committing the offence.

6. Theft Act 1968, s. 9. This is burglary and carries a sentence of 14 years' imprisonment.

7. Game Act 1831, s. 30. The penalty is a fine of £20, or £50 if five or more persons are involved.

occurs in the Firearms Act 1968[8], which makes it an offence for a person to enter or be in any building (or to enter or be upon any land) as a trespasser and without reasonable excuse while having a firearm with him.

5. Statutory exceptions such as these aside, the criminal law deals with entering or remaining on property by means of the Statutes of Forcible Entry, or more rarely, by means of the common law of forcible entry and detainer and, a little more indirectly, by resort to the offence of conspiracy to trespass as defined by the House of Lords in Kamara v. D.P.P.[9]

6. We do not propose to consider in any detail the statutory offences, some serious, some relatively minor, which have been created to deal with particular situations, but an examination of the present law of forcible entry and detainer and of conspiracy to trespass is required before it is possible to consider whether the present law is satisfactory, and, if not, what provisional proposals we can make for its improvement.

7. In accordance with our usual practice we have prepared this working paper for the purpose of consulting those who may be affected by or interested in the provisional proposals we put forward. We must stress that our proposals are only provisional and are to be reconsidered in the light of the views which we hope to receive.

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8. Sect. 20. In the case of a building, the penalty is 5 years' imprisonment, in the case of land 3 months' imprisonment.

9. [1973] 3 W.L.R. 198.

II. FORCIBLE ENTRY AND DETAINER

Common Law

8. At common law it is an offence, punishable with a fine and imprisonment, to make forcible entry upon, or to keep possession of, lands or tenements with menaces, force and arms and without the authority of the law[10]. To establish that the entry and detainer is forcible there must be proof of such force as constitutes a public breach of the peace, or such conduct as constitutes a riot or unlawful assembly[11]. This penal remedy grew from the need, as society developed, to provide greater protection for the King's peace and for property rights against the unlawful depredations of individuals and of armed bands seizing and holding lands or tenements[12]. It was frequently invoked in early times when the civil remedies available for establishing title to land and even for recovery of possession were very complex and set about with many legal pitfalls[13].

9. A study[12], based on an examination of early records of cases in the years preceding the passing of the first of the Statutes of Forcible Entry in 1381, shows the extent of the lawlessness in relation to the occupation of land. The account shows that offences of forcible entry and detainer were not confined to brigands and outlaws, but were committed by otherwise law-abiding persons, sometimes to recover land of which they had been dispossessed, and sometimes in the belief that they had some title to the land. It was against this background, and in an effort to assert the supremacy of the Crown over the feudal lords that the Forcible Entry Acts were first enacted.

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10. Russell on Crime (12th ed., 1964), p. 279.
11. Archbold's Criminal Pleading, Evidence and Practice (38th ed 1973), para. 3608.
12. L. Owen Pike, History of Crime in England, vol. 1 p. 249.
13. Holdsworth, History of English Law, vol. III pp. 3-28, vol. IV pp. 487-8.

The Forcible Entry Acts 1381-1623[14]

10. The Forcible Entry Act 1381 provides -

> "none from henceforth make any entry into any lands and tenements, but in case where entry is given by law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner."

The main departures from the common law of forcible entry are -

(a) The nature of the force required to make the entry forcible is wider than under the common law offence. It is sufficient under the statute that the force (whether directed against the property, or threatened against the person) was such as to be likely to deter a person minded to resist the entry[15].

(b) Forcible entry is prohibited even by a person who is entitled to possession or who has a legal right of entry[16].

11. The Forcible Entry Act 1391 provided a summary method of dealing with forcible entry which was followed by forcible detainer. The justices were empowered and required, upon complaint, to arrest and upon conviction to imprison offenders. This, however, still left forcible detainer, which had not been preceded by a forcible entry, outside the provisions of the

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14. The main parts of the present texts of these Acts are set out in the Appendix.

15. Milner v. Maclean (1825) 2 C. and P. 17.

16. Newton v. Harland (1840) 1 Man. and G. 644, (subject to qualifications raised in Hemmings v. Stoke Poges Golf Club Ltd. [1920] 1 K.B. 720).

statutes, and moreover the justices had no power to arrest and deal with a person who had entered forcibly but had left the property before he was taken by the justices.

12. These gaps in the legislation were remedied by the Forcible Entry Act 1429. This imposed upon the justices a duty to execute the provisions of the statutes where there had been a forcible entry (whether or not there was a detainer) or where there was a forcible detainer (even though not preceded by a forcible entry). The background to this Act seems to have been that there were many forcible entries by persons laying claim to land, who, once they had ejected the possessor, put in a person who held under the dispossessor, but without any exercise of force on entry[17]. To ensure enforcement of the statute there were provisions penalising any sheriff or bailiff who failed to do his duty under the Acts. There were also provisions of a civil character enabling the justices summarily to restore possession of any property entered and detained to the person dispossessed. In addition the Act provided that proceedings for forcible detainer could not be taken against a person who had been in possession for three years, and this was confirmed by the Forcible Entry Act 1588.

13. Finally the Act of 1623 made provision for a tenant for a term of years to have the civil protection afforded by the Statutes.

14. The civil actions which developed from the 1381 Act and those specifically given by the 1429 Act are today of no significance. Indeed, the latter Act was repealed except as to criminal proceedings by the Civil Procedure Acts Repeal Act 1879[18] and there are now other remedies available in both the High Court and the county courts which are free of technicality and which provide a reasonably expeditious means of recovering

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17. Reeves, History of the English Law, vol. III p. 289.

18. Sect. 2 and Schedule, Part I.

possession of land and tenements[19]. These newer remedies have long since replaced the jurisdiction of the justices to give repossession and we see no purpose in retaining those provisions in the early statutes which have fallen into disuse and for which no modern procedure is provided[20].

15. The position in regard to criminal proceedings is very different. There are from time to time prosecutions under the statutes although in almost every reported case in the last two hundred years the offence charged has included an allegation of detainer or at least of expelling the person in occupation. More recently the offence of forcible detainer has been invoked to deal with the continuing occupation by force of empty buildings by groups of "squatters"[21], and there is one reported case, R. v. Brittain[22], of a prosecution for forcible entry where three persons forced their way into a private house to take part in a social function there, but without any intention to take possession of the premises.

Analysis of the present law

16. The basis underlying both forcible entry and forcible detainer is the concern of the criminal law to preserve the

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19. Halsbury's Laws of England (3rd ed.), vol. 32, p. 371 (Actions for the recovery of land) and vol. 28, p. 739 (Remedies for trespass to land). Recent rules of court (supplementing Order 113 of the Rules of the Supreme Court and Order 26 of the County Court Rules) enable the court to make an order for possession without naming those in occupation, where a number of unidentified persons are alleged to be in unlawful occupation: R.S.C. (Amendment No. 2) (S.I. 1970/944) and County Court (Amendment No. 4) Rules 1970 (S.I. 1970/1201). In each case it is provided that except in case of urgency and by leave of the court no final order shall be made less than seven clear days after the date of service. See further para. 46 below.

20. Coleman and Scott, "Forcible Entry and Detainer: Substance and Procedure", (1970) 134 J.P.N. 364 at p. 380.

21. R. v. Robinson [1971] 1 Q.B. 156; R. v. Mountford [1972] 1 Q.B. 28.

22. [1972] 1 Q.B. 357.

peace. The offences are said to be committed by violently entering or keeping possession of lands or tenements with menaces, force and arms. Although it is a requirement of the common law offences that the offender's conduct must be likely to cause a breach of the peace[23], this is not an essential of the offences under the statutes. It would seem that it is sufficient that the force (whether directed against property, or threatened against the person) is such as to be likely to deter a person minded to resist the entry[24]. There have been many decisions on the question of what constitutes the violence or force necessary for the offences, and they are perhaps most succinctly summarised as follows[25]

> "In order to constitute the offence it is not necessary that there should be actual violence to the person of anyone. It is sufficient if there is any kind of violence in the manner of entry, as by breaking open the doors of a house, whether any person be therein or not, or by threats to those in possession giving them just cause to fear that bodily hurt will be done to them, if they do not give up possession, or by going to the premises armed or with such an unusual number of persons as plainly show that force will be resorted to. A mere trespass will not support an indictment for forcible entry. There must be proof of either such force, or such a show of force, as is calculated to prevent any resistance."

There is of course no requirement that there must be more than one person involved before there can be forcible entry or detainer, though the involvement of more than one person may make it easier to establish the required force or violence.

17. The most difficult aspect of the present law concerns the question of what "entry" is covered by the present offences, and one aspect of this, at least in the earlier cases, is whether it is necessary for someone else to be in possession of the property before entry is an offence.

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23. See para. 8 above.

24. Milner v. Maclean (1825) 2 C. and P. 17.

25. Halsbury's Laws of England (3rd ed.), vol. 10, p. 591.

18. The older authorities stress that the offences are concerned with interference with possession and not merely with custody[26]. In the field of real property "entry" was a term of art signifying "taking possession of land or tenements where a man hath title of entry"[27], or "the act of going on land or doing something equivalent with the intention of asserting a right in the land"[28], and many of the writers who deal with forcible entry suggest that "entry" bears this technical meaning[29]. This approach was not followed in R. v. Brittain[30] in which the Court of Appeal relied upon the ordinary meaning of the word "entry" to uphold a conviction for forcible entry where the intention of those who forced their way into another's house was to attend a bottle party at which it had been made clear to them they were not wanted.

19. The decision in R. v. Brittain[31] has swept away the distinctions that were thought to exist between entering property in order to assert a right to the land, or at least to assert a right and title out of the lands[32], and entering land without doing any act which expressly or impliedly amounts to a claim to the lands[33]. It is, however, an isolated decision which appears to run counter to the previously accepted approach,

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26. Halsbury's Laws of England, (3rd ed.), vol. 10, p. 597.

27. Tomlins, Law Dictionary sub nom. "entry" and "actual entry".

28. Jowitt, Dictionary of English Law.

29. Hawkins, Pleas of the Crown (1716), Bk. 1, ch. 64, s. 20, Wood's Institutes (1772), p. 426, Blackstone's Commentaries Bk. IV, ch. XI. 8, Stephen's Digest of Criminal Law (1877) Art. 79, and Russell on Crime (12th ed.), p. 279. Compare Dalton's Country Justice (5th ed., 1635), p. 196.

30. [1972] 1 Q.B. 357.

31. Ibid.

32. E.g. entering by force to distrain for arrears of rent, Russell on Crime (12th ed.), pp. 284-5.

33. E.g. going over land, even with a number of armed attendants on the way to church or market. Ibid., p. 285.

and it may perhaps still leave the law in a state of some uncertainty[34].

20. It has long been recognised that the offences are by their nature offences against another's possession of the land entered or detained, and that it is not necessary for the prosecution to establish the title of the person against whom the property is entered or detained[35]. Nevertheless, it is accepted that possession and not mere custody of the property must be proved. Thus in a case[36] where the owner sought to remove by force from his tied cottage a former servant, whose employment had ended, but who refused to leave the cottage, it was held that the servant had mere custody and not possession of the cottage. There was, therefore, no breach of the Statute of Forcible Entry. Distinctions of this kind between possession and custody are difficult to draw, and, if the purpose of the legislation is to prevent breaches of the peace, are without any substantial merit in the context of the use of force to evict a person from property that he is occupying.

21. Cases such as Scott v. Matthew Brown & Co.[37] and Collins v. Thomas[38] indicate that a mere trespasser does not by the very act of trespass, immediately and without the acquiescence of the person displaced, give himself against that person what the law understands by possession. It follows, so the argument goes, that the person displaced would not commit an offence of forcible entry if he used force in that situation to expel the trespasser, because the latter would not have obtained

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34. See J.R. Spencer, "Trespassers will be prosecuted - the wooden lie comes true", [1973] C.L.J. 10.

35. R. v. Child (1846) 2 Cox C.C. 102; Dalton's Country Justice (1655) ch. 22 p. 64, Stephen's Digest of Criminal Law, Art.

36. Hemmings v. Stoke Poges Golf Club Ltd. [1920] 1 K.B. 720, per Scrutton L.J. at p. 743.

37. (1884) 51 L.T. 746.

38. (1859) 1 F. and F. 416.

possession and it is possession which the law requires to be invaded before there is an offence. The significance of these cases has been revived by a restatement of their effect in dicta by Lord Denning in McPhail v. Persons Unknown[39]. That case was concerned with whether the court granting an order for possession of property unlawfully occupied by squatters had a discretion to suspend the operation of the order for a period. On the facts it appeared that the owner had not acquiesced in the unlawful occupation. In holding that the court had no discretion to suspend the operation of its order, Lord Denning referred to the owner's right of self-help as a factor weighing against the existence of the discretion. He said that on the facts the trespassers had not acquired possession of the property, and that, therefore, the owner would not have been liable criminally under the Statutes of Forcible Entry, which applied only to the expulsion of one who was in possession, even if he had resorted to force to expel the trespassers. Comment[40] on this decision suggests that Lord Denning oversimplified the matter by concluding from the fact that the owners had never acquiesced in the squatters' presence on the property that the squatters had never gained possession. There is, therefore, on the authorities as they now stand, some confusion as to when it is and when it is not an offence for a person deprived of his property to resort to force to obtain occupation of it.

22. It seems to us, therefore, that there are a number of reasons why the present law is in need at least of clarification. First, the nature of the occupation of the property which must be established before forcible entry upon it becomes an offence requires difficult distinctions to be drawn between possession and custody. Secondly, there is a lack of any clear definition as to when the use of force by a person entitled

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39. [1973] 3 W.L.R. 71.

40. (1973) 89 L.Q.R. 458; D. Yates, "Squatters and Possession Orders", (1973) 123 New L.J. 763; D. Macintyre, "Squatters - Recovery of Possession", [1973] C.L.J. 220.

to occupation may amount to an offence. Thirdly, there is the possible doubt as to whether any entry is sufficient to constitute the offence, or whether it is limited to entry with an intention to assert a right in the land. Finally, there is the fact that the present law is to be found in medieval statutes designed to meet very different social conditions.

III. CONSPIRACY TO TRESPASS

23. Whilst it is clear that the offence of conspiracy is at present not limited to those cases where there is a combination to commit a crime, there is still a degree of uncertainty as to what objects of a combination will support a criminal charge of conspiracy. In Working Paper No. 50[41] our Working Party has briefly considered what may be the unlawful but not criminal objects of a criminal conspiracy under the headings of -

(a) conspiracy to defraud,
(b) conspiracy to defeat the course of justice,
(c) conspiracy relating to public morals and decency,
(d) conspiracy to do a civil wrong,
(e) conspiracy to "injure",
(f) conspiracy with a "public element".

Of these the last three are most likely to be relevant to a conspiracy to trespass.

24. In R. v. Turner[42] Lord Ellenborough held that an agreement to commit a civil trespass was not indictable of itself.

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41. Paras. 7 and 16-31.
42. (1811) 13 East 228.

This accords with the general view that a conspiracy to commit a tort (not in itself a crime) was not a criminal offence unless the tort involved fraud, violence or malice. Although Lord Campbell in R. v. Rowlands[43] thought that the decision in Turner was wrong on the facts, because there was evidence of an agreement to oppose any interference with the trespassers with offensive weapons, the principle that an agreement to trespass without more is not indictable seemed to be the law, and it was so held in Kamara v. D.P.P.[44]

25. The facts in this recent case were that about a dozen students from Sierra Leone, holding political opinions contrary to those of the party in power there, agreed together to occupy the premises of the Sierra Leone High Commission in London and to hold a demonstration there to obtain publicity for their grievances. In pursuance of the agreement a number of them entered the premises, purported to arrest the caretaker, threatened another caretaker with a toy pistol which he took to be genuine, locked a number of the staff in a room having physically held or pushed a number of them, and used a telephone to report their actions to the press and television news staff. The demonstration came to an end when the police eventually intervened without having to resort to force. The students were charged, inter alia, with conspiracy to enter as trespassers the premises of the High Commission of Sierra Leone in London. They were convicted, their conviction was upheld by the Court of Appeal, and they appealed to the House of Lords. The point in regard to conspiracy before the House of Lords was whether an agreement to commit a trespass could be an indictable conspiracy and, if so, in what circumstances.

26. Lord Hailsham of St. Marylebone, L.C., with whom Lord Morris and Lord Simon of Glaisdale agreed, dealt in some detail with the law of conspiracy and with what tortious conduct, if

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43. (1851) 17 Q.B. 671.
44. [1973] 3 W.L.R. 198.

agreed upon, could be the subject of a conspiracy charge. He accepted the oft-stated proposition[45] that the courts should by the criminal law protect individuals from certain wrongs arising from acts done by a number of persons which, had they been done by a single wrongdoer, would have given rise to a civil remedy only. But he was not prepared to hold that every conspiracy to trespass was an indictable offence. He held that a conspiracy to trespass could be a criminal offence, but only in certain circumstances and where there was some sufficient additional factor. It was a sufficient additional factor, he considered, that the conspiracy to trespass involved the invasion of the domain of the public, and he gave as examples the invasion of a building such as the embassy of a friendly country or of a publicly owned building. The Lord Chancellor went on to define other circumstances in which a conspiracy to trespass (or to commit any other tort) would be indictable, namely where the execution of the combination -

(i) would infringe the criminal law in other respects, as by breaching the Statutes of Forcible Entry, the Criminal Damage Act 1971 or the criminal law of assault, or

(ii) would necessarily involve and be known and intended to involve the infliction of something more than purely nominal damage, as where it was intended to occupy the premises to the exclusion of the owner by expelling him or otherwise effectively preventing him from enjoying his property.

27. Lord Cross stated the matter somewhat differently. He held that an agreement by several to commit acts, which if done by one would amount only to a tort, might constitute a criminal conspiracy if the public had a sufficient interest, that is to

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45. E.g. per Lord Bramwell in Mogul Steamship Co. Ltd v. McGregor, Gow & Co. Ltd. [1892] A.C. 25, 45, and per Barry J. in R. v. Parnell (1881) 14 Cox C.C. 508, 520.

say if the carrying into execution of the agreement would have consequences sufficiently harmful to call for penal sanctions. He cited as an example an agreement to trespass which, because of the nature of the property to be trespassed upon, or of the means to be employed in carrying out the trespass, or of the object to be achieved by it, might call for a penal sanction. As formulated by Lord Cross, the offence of conspiracy to trespass would be a wider than that formulated by the Lord Chancellor, and could apply in circumstances very different from those of the case that was before the House.

28. The effect of this decision is that there is now a wide, but loosely defined, area where an agreement to trespass may be a criminal offence, and that where there is a trespass by two persons acting in concert criminal proceedings may in certain circumstances be brought although such a trespass would not be criminal if committed by one person alone. The offence of conspiracy to trespass is wider in one important respect than any of the offences under the Statutes of Forcible Entry in that it is not a necessary element of the conspiracy that there should be any display or threat of force. This means that any group of squatters who occupy property without authority are guilty of a criminal offence if they intend to prevent the owner from enjoying his property, as, of course, will usually be the case.

29. The state of the common law following this decision clearly illustrates the dangers of the lack of a clear definition of those "unlawful" aims which may make an agreement a criminal conspiracy. It is not necessary to go beyond even the first proposition that an agreement to trespass which involves the invasion of the domain of the public is a criminal conspiracy to perceive the uncertainty in the definition of the offence. Does the "domain of the public" include not only publicly owned property, but also privately owned property to which the public has access such as a cricket or football ground?

30. The questions which are likely to arise under the test of whether the execution of the combination necessarily involved and was known and intended to involve the infliction of something more than purely nominal damage are also likely to be diffuse and difficult to answer. The test would, of course, clearly exclude an agreement by two hikers to cross another's land by a private path doing no damage even when they acted in defiance of his rights, but at what stage would the agreement amount to a criminal conspiracy? If a number of people agreed to walk along the path at five minute intervals throughout the day, knowing that this would upset and annoy the owner of the property, would this be sufficient?

31. If the criterion of Lord Cross is applied even wider questions arise, for the test he favours is whether the conspiracy is such that carrying it out would have consequences sufficiently harmful to call for penal sanctions. This is, he considers, a matter to be considered by the judge as a question of law on the facts alleged in the indictment. In the case of a conspiracy to trespass he indicates that circumstances making the conspiracy criminal may be related to the nature of the property to be trespassed upon, the means to be employed in carrying out the trespass[46] or the object to be achieved by it. The result is that whether there was an offence disclosed in any indictment would depend upon the view of the judge as to whether the facts alleged constituted an offence.

32. As we said in Working Paper No. 50[47], it is not merely desirable, but obligatory, that legal rules imposing serious criminal sanctions should be stated with the greatest clarity which the imperfect medium of language can attain. Nor do we think that it would be satisfactory to take as the basis of a

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46. Including, for example, the number of people involved in the conspiracy: R. v. Bramley (1946) 11 Jo. Crim. Law 36 (C.C.C.).

47. See para. 9.

statutory reform of this branch of the law a definition of an offence which left the question of what conduct constituted an offence to the decision of a judge, particularly in the area of trespass in which sensitive questions so frequently arise. It would, we feel, be even more unsatisfactory if the question of whether or not the facts proved amounted to an offence were to be left to the jury, notwithstanding that this was subject to a ruling by the judge as to whether any acts of the type in question were capable of constituting an offence. The latter approach is the one adopted in R. v. Withers and Others[48], where the Court of Appeal did not consider itself bound by the contrary dicta in Kamara v. D.P.P.[49]

IV. PROPOSALS FOR REFORM

Introductory

33. In considering proposals appropriate to our new terms of reference and to define the circumstances in which entering or remaining on property should constitute a criminal offence, we have been conscious of the difficulty of reconciling two basic approaches. On the one hand it could be argued that the main purpose of such legislation should be the protection of property rights, as is the case for example with the Theft Act 1968. On the other hand it could be argued that as there is no danger of real property being lost to the owner by unlawful occupation, in the same way as a chattel may be by theft, the main concern of the legislation should be the preservation of public order. In their original operation the Statutes of Forcible Entry provided both criminal sanctions and, under the Forcible Entry Act 1429, a summary remedy for the recovery of possession. This summary remedy has fallen into disuse and the amendments to the Rules of Court we have referred to in paragraph 14 now provide a reasonably expeditious means of recovering property unlawfully held. We have not lost sight of the

48. [1974] 2 W.L.R. 26, 33.

49. [1973] 3 W.L.R. 198, 217, per Lord Hailsham, L.C.

fact that even with these amendments there may still be cases where an owner may suffer real hardship from not being able to obtain immediate occupation of his own property from which he has been wrongfully excluded. Nevertheless it is our view that the main justification for criminal offences in the field of entry upon or occupation of property adversely to the person entitled to occupation is the danger of a breach of the peace occurring, to the alarm and inconvenience, and perhaps to the danger, of others.

34. It seems to us that the principal factors which are relevant in determining what offences are required are -

(a) the concern of the law to prevent breaches of the peace,

(b) the need to ensure that persons should not with impunity be able to prevent those entitled to property from using it,

(c) the fairness of excluding from the operation of the criminal law those who have a genuine belief that they have a legal right to remain in occupation of property they have been occupying, and

(d) the undesirability of involving the police in disputes which should more properly be settled in civil proceedings.

35. With these factors in mind we provisionally propose that two new offences should be created to replace the offences of forcible entry and detainer, whether at common law or under the statutes, and the offence of conspiracy to trespass as found to exist by the House of Lords in Kamara v. D.P.P.[50] In

50. [1973] 3 W.L.R. 198.

essence these two offences should be -

1) Without lawful authority entering property by force adversely[51] to any person in physical occupation, or with the right to occupy it, and

2) Being unlawfully on property and failing to leave as soon as reasonably practicable after being ordered to leave by a person entitled to occupation.

A new entry offence

36. The law has long recognised the importance which people attach to the land and buildings they occupy and has recognised the right of an occupier to use reasonable force to prevent unauthorised entry upon his property. The existence of this right acts to a certain degree as a deterrent to those who may be minded to enter another's property and to this extent there is a strong case for leaving untouched the right to use reasonable force to prevent unauthorised entry on property. But exercise of the right may lead to a breach of the peace if the unauthorised entrant persists in his conduct, using force to counteract the means marshalled against him. Parallel to the right to use reasonable force, therefore, there exists a need for retaining an offence of entering property by force.

37. The law also recognises the right of a person with a right to occupy it to use reasonable force to take occupation of property of which he has been wrongfully deprived. This right is, however, subject to the limitation imposed by the

51. The meaning of "adversely" is discussed in para. 44, where we suggest that there should be an intention to enter against the will of any person in physical occupation, or, where there is no person in physical occupation, against the will of the person with a right of occupation.

Forcible Entry Acts (although the precise extent of this limitation is not entirely clear[52]), and other specific restrictions imposed, for example, by the Rent Act 1965[53]. There is, in our view, very much less justification for allowing such resort to force in the case where an owner or a person entitled to occupation is out of occupation but seeking to gain it, than in the case of an occupier repulsing intruders. Once self-help of this nature is allowed it is difficult to know where the line is to be drawn; while it may be thought acceptable for a person to eject a trespasser from his dwelling house occupied while he was away for the day, it may be thought far less acceptable to allow the use of a strong-arm gang to obtain occupation of a building planned for redevelopment but which squatters had been occupying for some time. Not only is the use of force undesirable in itself, but the threat it poses to the squatters may lead them to resist, and so provoke a violent clash. Those in occupation, when faced with an angry owner and his employees, may well fear for themselves, particularly if there is resort to such tactics as sending in a gang of workmen to demolish the building in which a group of squatters is living[54].

38. It is our provisional view that provided that the law affords to the person entitled to occupation but excluded from it a speedy means of regaining his occupation without the exercise of self-help, a resort to force should not be permitted to a person seeking to enter his property. It should, we think, be an offence for a person to enter even his own property by force if it is held by another adversely to him.

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52. See para. 21.

53. Sect. 30(2) makes it an offence to do any act calculated to interfere with the peace or comfort of a residential occupier of premises with intent to cause him to give up occupation of the premises. There will be some overlap between this offence and the new entry offence we propose. This, we think, is tolerable because each is aimed at a different type of mischief. Our offence is more restricted in that only the use of force as defined is penalised, but wider in that it relates to entry into property occupied for any purpose. The section 30 offence is narrow in that it relates only to acts aimed at a residential occupier of premises, but wider in that it covers an extensive range of conduct.

54. The Guardian, 27 July 1973. Apparently no criminal proceedings were taken.

39. In reaching this conclusion we have considered the views of the Law Reform Committee on the questions of self-help in the recaption of chattels in their report on Conversion and Detinue. They recommend[55] that, provided no more force is used than is reasonable, a person should be entitled to use force to recover a chattel of which he has been wrongly deprived. They envisage that it might be reasonable even to enter another's land or building to recover a chattel. Having regard to the definition of the force which we propose should be an essential element of the entry offence[56], it is our view that a forcible entry to recover a chattel, which involved an application, display or immediate threat of force likely to dissuade a person for fear of violence to his person from offering lawful resistance to the entry should never be regarded as reasonable. Accepting the basis of the Committee's report that reasonable self-help in recaption should continue, as being within the ordinary man's conception of his fundamental rights, we doubt whether the ordinary man would consider himself entitled to use such force to gain entry to another's property in order to recover a chattel; in the interest of preserving public order we do not think that there should be any such right.

(a) Entering

40. A breach of the peace is as likely to occur whether the person forcing his way onto property does so for a permanent or temporary prupose. The offence should not require that the entry be for any particular purpose, and entry for a limited purpose, as in R. v. Brittain[57], and unconnected with any assertion of a right in the property, would be within the offence.

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55. (1971) Cmnd. 4774, paras. 122-126.

56. Para. 43 below.

57. [1972] 1 Q.B. 357.

(b) Property

41. Apart from covering land and buildings, it is our provisional view that the offence should also cover vehicles or vessels that are inhabited. Recent Irish legislation[58] is very much wider and covers both caravans and mobile homes, and trains, omnibuses, vessels and aircraft not in flight, but our present view is that there is no need to provide for such a wide coverage. In our provisional view the property covered by the offence would be sufficiently wide if extended only to inhabited vehicles or vessels, such as caravans or houseboats, neither of which can be regarded as real property. So defined the property covered would be consistent with buildings, entry into which is burglary under section 9 of the Theft Act 1968.

(c) Force

42. We have said that an essential element of the offence we propose should be that the entry should be accompanied by force. This makes it necessary to provide what is meant by force. Under the common law of forcible entry and detainer there must be proof of such force as constitutes a public breach of the peace or such conduct as constitutes a riot or unlawful assembly. Under the statutes it is sufficient that

58. Prohibition of Forcible Entry and Occupation Act 1971.

the force (whether directed against property, or threatened against the person) is such as to be likely to deter a person minded to resist the entry. We do not think that it would be satisfactory to frame the requirement of force in either of these ways. The latter is vague and imprecise, and the former is dependent upon the meaning of "breach of the peace", a phrase which, it has been pointed out[59], seems clearer than it is. We think too that in defining a new offence it is better, if possible, to avoid using words and phrases, the meaning of which have to be gleaned from the use of those words and phrases in other contexts.

43. It is our provisional view that to constitute either of the offences there should be an application or a display of force, or an immediate threat to apply force, any one of which would be likely to dissuade a person of reasonable fortitude, for fear of violence to his person, from offering lawful resistance.

(d) Without lawful authority

44. It is necessary to qualify the entry as being without lawful authority to allow, for example, the bailiffs and those acting under their authority to execute a court order, and the police to act within the scope of their authority under laws relating to search and arrest and to the prevention of crime. The lawful authority which will take an entry by force outside the ambit of the proposed offence must be an authority not merely to enter, but to enter by force. Since the offence will penalise even a person with a right of occupation who enters by

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59. Professor Glanville Williams, "Arrest for Breach of the Peace", [1954] Crim. L.R. 578: "The expression 'breach of the peace' seems clearer than it is and there is a surprising lack of authoritative definition of what one would suppose to be a fundamental concept in criminal law." See also Ackers v. Taylor, The Times, 13 December 1973.

force, it follows that no authority he gives to another to enter by force can be a lawful authority for this purpose.

(e) Adversely to the person in physical occupation (or with a right to occupy).

45. As we have indicated in paragraphs 20 and 21 we do not think that there is merit in retaining the present distinction drawn between possession and custody of property as a basis for determining whether forcible entry upon it should be an offence. The first situation which such an offence should cover is forcible entry onto property physically occupied by another against the will of that person, and we think that the law should be so framed to make this clear. This will result in a change of the present position not only in regard to property of which another merely has custody, but also in regard to a person entitled to occupation resorting to self-help. The desirability for such a change we have already referred to in paragraphs 37 and 38. The offence, however, should be one which requires a mental element in the defendant, in that he must intend to act against the will of the person in physical occupation. Thus a person who forcibly enters a house which is on fire in order to rescue a person whom he thinks is asleep in it would not be acting adversely to the occupier.

46. It may be that circumstances will arise where there is forcible entry upon property which is not physically occupied by another, where, for example, there is entry into a house just acquired but as yet unoccupied, or into premises which the owner or the tenant is not actually occupying. In order to avoid any difficulty as to whether this offence can be committed when the property is not physically occupied we suggest that it should be provided that forcible entry upon property adversely to another who has a right to occupy it should also be within the offence, again provided there was an intention to act against the will of the person with the right. In short, our proposal is

that it should be sufficient for the prosecution to establish that there was forcible entry upon property physically occupied by another or which another has a right to occupy, intending to act against the will of that person.

A new offence of remaining on property

(a) General

47. We have said in paragraph 38 that the creation of an offence of forcibly entering property which penalised a person who resorted to forcible self-help to recover his own property would require that there should be some provision of speedy but peaceable means for recovering the property. The summary power to restore possession given to the justices by the Forcible Entry Act 1429 has fallen into disuse and there is no modern procedure for its exercise. The civil remedies are now to be found in Order 113 of the Rules of the Supreme Court and in Order 26 of the County Court Rules, and these rules, particularly since they were amended in 1970, do provide remedies which in most cases are expeditious enough[60]. In some instances, however, the delay of a few days may be highly disadvantageous to the person seeking personal occupation of property from which he has been excluded; nor can it be entirely overlooked that any resort to civil proceedings can involve even the successful litigant in costs which he will not be able to

60. In cases of urgency and by leave of the court, the minimum period of 7 days between the date of service and the date of making a final order may be dispensed with. See note 19. This leave must have been given in McPhail's case [1973] 3 W.L.R. 71, where there was an interval of only 5 days between the taking out of the summons and the grant of the order, although a further 3 days had elapsed between the discovery of the unlawful occupation and the service of summons. In the other case considered in the same judgment the interval between the service of summons and grant of the order had also been 5 days, although a month had elapsed from the date of unlawful entry.

recover, either because the defendant is unable to pay, or because under an order for the payment of taxed costs certain solicitor and client costs will not be included. In addition, it is possible under the present law for those who continue in occupation of another's property to be prosecuted for forcible detainer, if their conduct warrants it, or with conspiracy to trespass, if they are acting in concert and causing something more than nominal damage, as they will be if they are occupying premises to the exclusion of the person entitled to occupation. The police will then be able to arrest the offenders and it will be possible for those entitled to occupation to re-enter at once.

48. There would seem to be three possible approaches to the question of whether there should be criminal sanctions attaching to the unlawful and continued holding of property. It could be said that the civil remedies alone are sufficient, bearing in mind the recent changes to the rules of court; it could be said that the existing offences should be retained; or it could be said that the existing offence should be replaced by a new offence. Our provisional view is that the last approach is one that should be adopted, and we would particularly welcome comment on this. In particular it may be thought that the provision of a criminal remedy for continuing trespass is unnecessary, or at least should be limited to those situations where force is relied upon to maintain the illegal occupation. In proposing the retention of a criminal offence to deal with continuing trespass we appreciate that in general it is undesirable to allow the criminal law to be employed where a civil remedy may be sufficient. Therefore, if there is to be a criminal offence to cover the conduct,we think that it should be strictly limited in its scope. We do not think that the limitations of the present law are sufficientl precise or even apt to many of the situations that can arise. Our provisional view is that many of the difficulties in creating an acceptable offence in place of the very general offence of conspiracy to trespass would be met by the creation under certain

conditions of an offence of failing to leave premises when required to do so.

49. If there is to be such an offence its elements will require the most careful consideration, and we suggest that (subject to the limitations and details discussed below[61]) it should have at least the following essentials -

(a) The defendant must be unlawfully upon another's property, (and it should be a defence that he genuinely believed he was entitled to be on the property),

(b) He must be ordered to leave,

(c) There must be a failure to leave as soon as reasonably practicable after the order,

(d) The order must be given by, or on behalf of, a person entitled to occupy the property in such terms as to make it clear that the person is entitled to give the order.

The offence need not carry a heavy penalty, but there should be power given to a police officer to arrest a person whom he believes to be committing the offence.

(b) Relationship to conspiracy to trespass

50. Before discussing the elements of this offence in more detail, we examine whether our provisional proposals will provide satisfactory coverage of unlawfully entering or being upon property on the assumption that conspiracy to trespass will no longer be an offence, even with the qualifications put upon in it

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61. See paras. 53 - 64.

in Kamara v. D.P.P.[62] In the first place any entry which entails the use of force will be an offence under our provisional proposals in paragraph 36. Other unlawful entry which involves the commission of some other offence such as criminal damage, assault, unlawful assembly or unlawful possession of firearms, not amounting to force as we propose in paragraphs 41 and 42 it should be defined, will not be penalised as an entry offence, but those taking part will be guilty of one or more of the particular offences involved, and, if acting in concert, of conspiracy to commit those offences. However, an agreement merely to enter peacefully, but without authority, a building such as a foreign embassy or a publicly owned building would be no offence. It is our view that it is unnecessary in practice to penalise mere trespass. The seriousness of the conduct should lie not in the peaceful entry, but either in the use of force (as proposed in our first offence) or in persisting in remaining when ordered to leave, which we now propose should be made an offence.

51. Our proposals are not wide enough to cover every conspiracy to trespass which might be indictable as a conspiracy to effect a public mischief. For example, there has been a conviction[63], on a plea of guilty, of conspiracy to trespass where there was trespass in order to install "bugging" devices in bedrooms to obtain evidence in connection with possible divorce proceedings. It seems, though the issue was not raised, that the basis of the offence was that it was a conspiracy to effect a public mischief. It was held in a later case[64] that it

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62. [1973] 3 W.L.R. 198.

63. R. v. Withers & Ors. The Times, 17 June 1971. In sentencing the defendants Roskill J. said that their ac had passed "far over the line between what is lawful and what is unlawful and in a way which leaves a sense of outrage".

64. R. v. Withers & Ors. [1974] 2 W.L.R. 26(C.A.).

was an indictable conspiracy to effect a public mischief to conspire to deceive banks, building societies, government departments and local authorities into giving, in breach of duty, confidential information about persons, whose records they held. The essence of these types of offences is not so much the conspiracy to trespass, if any, as the conspiracy to invade privacy or obtain confidential information by whatever means. We do not, therefore, think that we should attempt under our present terms of reference to deal with this much wider aspect of conspiracy. It will be necessary at some stage in the codification of the criminal law to deal with both conspiracy to effect a public mischief, and with public mischief as a substantive offence.

52. The other main criterion suggested in Kamara v. D.P.P.[65] is that there may be a conspiracy to trespass where the execution of the combination would necessarily involve and be known and intended to involve the infliction of something more than purely nominal damage. It is difficult to postulate a likely fact situation where this could arise without a plan to remain on the premises despite a warning to leave, and if this were the plan there would be a conspiracy to commit the offence we have proposed in paragraph 48. It is true that our proposals would not penalise a single spectator at a tennis match who time and again trespassed on the court during play but did so only momentarily on each occasion and never refused to leave the court if asked to do so, but such a person would not be guilty of any offence at present. If two or more persons indulged in such a course of conduct by agreement it may be that they would, under the principles of Kamara[65], be guilty of conspiracy to trespass, and to that extent our proposals may narrow the law. It seems to us, however, that our proposals will cover the situation so far as is necessary, because the spectator will be a licensee upon the premises where the match is being staged, and if his licence is lawfully revoked he becomes a trespasser and he may be removed by reasonable force. Alternatively he may be ordered to leave, and his

65. [1973] 3 W.L.R. 198.

failure to leave as soon as reasonably practicable would then be an offence under our proposal. If, therefore, it could be established that there was an agreement to stay on despite formal notice to leave the ground there would be a conspiracy to commit an offence.

(c) Limitations on the offence

53. We appreciate that the offence we are proposing will have the effect of widening the criminal law, at all events in the case of a trespass by one person where there is no element of conspiracy. It may be thought therefore, that without some qualifications the proposed offence would be too wide in that it would allow a property owner to invoke the criminal law against trespassers, when in the circumstances his civil remedies should be regarded as adequate. On the other hand, it may be thought that, since the offence of forcible entry which we have proposed takes away the right to repossess by force given by the present law in certain circumstances, it would be justifiable to provide without qualification that it should be an offence to leave when ordered to do so. It is, however, our provisional view that there should be some limitation on the situations to which the offence should apply.

54. In the first place the position of a tenant holding over after the expiry of his tenancy is notoriously a delicate one and often involves an underlying civil dispute as to the rights of the tenant to be on the property. Accordingly, we propose that the offence should not cover situations which arise where a person remains on after the expiry of his tenancy. Nor should the offence cover the situation where a person who has been allowing another to share his residential premises, even though not strictly speaking as a tenant, has terminated the arrangement. It seems inappropriate to allow the sanction of the criminal law to be invoked to settle what usually amount to family differences or disputes between those who were friend

55. Secondly, we think that the principal reason for having an offence of this nature is to allow the criminal law to be invoked in situations of urgency where undue hardship might be caused to persons deprived of, or hampered in the use of, their property, if they were restricted to their civil law remedies. We have, however, found difficulty in framing clear and simple provisions to exclude from the operation of the offence those situations where we would not want it to apply. We have finally decided to put forward two solutions as alternatives and to seek views as to which is preferred. If neither appeals, we would of course, welcome any other proposal. The first of our proposals would take account of the nature and duration of the illegal occupation; the second will take account of the need of the person with the right to occupy the property.

Alternative A.

It can be argued tht it would be unduly harsh to allow the criminal law to be invoked to secure the eviction of squatters who are in established residential occupation of property. If civil proceedings are taken against them they will in practice have at least a few days warning of the need to leave before they will be removed by the bailiffs, whereas under our proposed new offence they would have to leave as soon as reasonably practicable after the order to leave, which would certainly give them only very limited time. A phrase such as "established residential occupation" is, however, too imprecise to offer a satisfactory test, and to use it may encourage demonstrators properly advised to bring with them sufficient bedding and other household equipment to indicate that they are in established residential occupation. This particular problem might be overcome by providing that where a person has been living on the premises for 14 days no order to leave would qualify as an order failure to comply with which would

attract criminal liability. There are disadvantages in this solution. In particular it might be thought to encourage the precipitate use of criminal proceedings when civil proceedings would provide a sufficient remedy. Further it may be thought that it is wrong to allow a person to escape criminal sanctions merely if he succeeds in maintaining an illegal occupation for a certain period before he is actually ordered to go. Finally, it may be difficult for the police to know in many cases how long the intruders have been living on the property.

Alternative B.

The other alternative we put forward is that the criminal remedy should be available against those living on premises only when the person entitled to occupation of the premises requires them for immediate use. The criminal law would then be available in the case where a person has purchased a house for immediate occupation and finds squatters living in it. It would equally be available where the legitimate occupier of business premises occupied by squatters during a time when the business was closed for a holiday required the premises to continue his business operations. The criminal law would not be available, however, where the owner wished to evict squatters merely to keep his property empty, intending eventually to start redevelopment. The disadvantage of this solution is that there is some lack of precision in the concept of requiring premises for immediate use, but we feel that this may be preferable to the arbitrary fixing of a period after which the criminal law cannot be invoked.

56. A third possibility is to limit the criminal remedy to cases where trespassers who remain on property after being

requested to leave are substantially interfering with the use of the property. It can be argued, for example, that where trespassing demonstrators are exhibiting placards on property which they refuse to leave on request, but not interfering in any way with the ordinary use of that property, the lawful occupier is already provided with adequate remedies and that to add a special criminal remedy might be needlessly severe. The lawful occupier may, where he thinks this can easily be effected, employ reasonable force to expel the trespassers or he may obtain an order in the civil courts for their removal.

57. We have reached the provisional conclusion that the first limitation (as described in paragraph 53) is in any event necessary. We have not reached a firm conclusion as to the desirability of the second limitation (in either of its alternatives described in paragraph 54) or as to the possible limitation suggested in paragraph 55.

58. We would welcome comment on what limitations, if any, are required in this context.

(d) Detailed requirements of proposed offence

(i) Unlawful presence

59. We considered whether to make it a requirement of this offence that there should be an entry as a trespasser as in the case of burglary[66]. This would have met the majority of cases but it would not have covered, for example, some student sit-ins,

66. Theft Act 1968, s. 9.

where the students may have a right to be in or pass through the place where they decide to remain, or the case of a group who enter the office of, say, a bank or an airline that is open to the public, ostensibly for a legitimate reason and then remain on as a demonstration. In the case of persons who are on premises by reason of a licence, either express or implied, it will be necessary that the licence be lawfully revoked so as to make those persons trespassers, and for there to be an order to leave. In most cases the withdrawal of the licence and the order to leave will be given at the same time. There may, however, be certain cases where there will have to be two requests to leave before the remaining on becomes an offence - the one request making the presence unlawful and the second making the remaining on an offence. In our view this would not, in such cases, be too stringent a requirement to make continued presence an offence where the original presence was not unlawful. Any lesser requirement would result in mere trespass being an offence, and we have already indicated[67] that we consider an offence of this breadth to be unacceptable.

60. The essence of the proposed offence is that the criminal law should deter those who deliberately persist in interfering with the property rights of others. But if the defendant does in fact believe that he is entitled to be on the premises it would not seem to be right that the criminal law should be brought to bear upon him. It is our view, therefore, that it should be a defence that the defendant believed that he has a legal right to be on the premises. The issue would be the genuineness and not the reasonableness of the belief, though, of course, in determining the genuineness, the reasonbleness would be a relevant factor.

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67. See para. 50.

(ii) Order to leave

61. The order to leave, as we have indicated above, must be an order to leave property, the defendant's presence on which is unlawful, and must, therefore, be additional to, though usually simultaneous with, any withdrawal of a licence to be on the property.

62. The order must be given by a person entitled to occupy the property, or by another authorised by such a person to do so, and this must be made clear to the defendant. The creation of such an offence must not be taken to give the police a power on their own initiative to make a person guilty of the offence if he refuses to leave the premises merely on a police instruction.

(iii) As soon as reasonably practicable

63. Our proposed new offence is designed primarily to deal with situations of urgency arising from persons unlawfully remaining upon property, and as a replacement for offences which do not now require any opportunity to be given to a defendant to avoid criminal liability by complying with an order to leave property where he has no right to be. In cases of the invasion of property as a demonstration there is no reason why those unlawfully on property should not be required to leave immediately they are ordered to do so. On the other hand this may be too strict a requirement in the case of squatters who have been living on premises for some time. It is, therefore, difficult to provide any fixed, or even minimum, period, within which the order to leave must be complied with, and to use a phrase such as reasonable time might bring in too wide a range of considerations. For example, the phrase might well be taken to allow such a matter as whether other accommodation was available to those ordered to leave, and we do not want to introduce uncertainty of this nature.

64. It is our provisional view that it would be right to relate the time, within which those ordered to leave should do so, to the purely practical consideration of how long it would reasonably take to leave the premises. As we have said above, in the case of demonstrations they should be obliged to leave at once, while in the case of those living on the premises they should be allowed sufficient time to gather their things together and move out. We think that this requirement can be expressed as being an obligation to leave as soon as reasonably practicable[68].

(e) The police and the new offence

65. The proposals are in the nature of a compromise, limiting the right of an occupier deprived of his occupation to resort to forcible self-help, and providing some speedy means in suitable cases for enabling such a person to secure the removal from the property of those who are unlawfully on it, where their continued illegal presence may cause hardship, or prevent proper use being made of the property. The speedy means lies in our proposal to make continued illegal presence after an order to leave a criminal offence, so giving the police the power to intervene.

66. We have not reached any final view on the penalty which should be provided for either of the two offences which we are proposing but we do not think that the penalty for forcible entry should exceed 2 years' imprisonment, nor the penalty for failing to leave, 6 months' imprisonment. This means that there would be no power of summary arrest of a person suspected of committing either offence[69], unless there was a specific provision, and consequently no immediate means of removing those illegally on the property. We propose, therefore, that there should be a power of arrest given to the police where they have reasonable ground to believe that either of the offences has been committed.

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68. This phrase is used in s. 25(2) of the Road Traffic Act 1972, to prescribe the time within which certain accidents must be reported: see Bulman v. Bennett [1974] Crim. L.R. 121.

69. Criminal Law Act 1967, s. 2.

67. In this way a person excluded from his property would, in a proper case, be able to seek police assistance to regain it, but the police would have a wide discretion as to whether they should intervene. In any but the more blatant cases of owners being excluded from their property, the police might well decline to arrest the alleged intruders, but the existence of the power will be a strong inducement to aggrieved owners not to take the law into their own hands and risk prosecution under the forcible entry offence that we propose. Of course, where there is a history, or even a real possibility, of a dispute between the parties, the police can often make the most helpful contribution by remaining impartial[70], provided there is no likelihood of a disturbance.

68. We are aware that in general the police are not in favour of the creation of an offence of criminal trespass, because of the burden which this may cast upon them of deciding difficult questions of property law, and because it may involve them unnecessarily in what are regarded primarily as civil disputes. We appreciate their position, but we think that our proposals will simplify the task of the police, and obviate difficulties which they have either under the present law of forcible entry and detainer, or under the law of conspiracy to trespass as it now stands. The detail with which the proposed offences would be spelled out will, we hope, make it easier for the police to know whether an offence has been committed. We would, however, particularly welcome comments from the police on our proposals, and their views as to how the proposals, if implemented, would affect them in dealing with offences of this nature.

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70. See the report of a Home Office letter in The Magistrate (1973) vol. 29 p. 178 dealing with the role of the police in minor offences of criminal damage to property.

V. REPEAL POLICY

69. If the two offences we propose were to be enacted there would in our view be no need to retain the common law of forcible entry and detainer, nor the Forcible Entry Acts 1381 - 1623. So far as these statutes provide for criminal offences the new offences will, we think, sufficiently cover the ground. So far as the statutes are today unrepealed in regard to civil remedies they have fallen into disuse[71].

70. It would be a step towards implementing the proposal made in Working Paper No. 50 to limit the crime of conspiracy to an agreement to commit an offence, if with the enactment of these offences it was possible to cease to treat as criminal those cases of conspiracy to trespass, falling short of conspiracies to commit a crime, which at present constitute criminal conspiracies by reason of the principles laid down in Kamara v. D.P.P.[72]

71. The present range of offences such as unlawful assembly, assault and criminal damage, and the two offences we are now proposing are in our view wide enough to cover such conduct incidental to entering and remaining on property as should be criminal. We think, therefore, that conspiracy to trespass to the extent that it is a crime even when no conspiracy to commit a criminal offence is concerned, can be abolished.

72. Conduct which may involve trespass, but which is now indictable either as a public mischief or as a conspiracy to commit a public mischief, will in due course need to be considered at some stage in the codification of the criminal law[73]. But the abolition of the offence of "conspiracy to trespass" in the above sense will not affect the ambit of those offences where the essence of the offence is not so much the trespass as the mischief to be effected.

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71. See para. 14.
72. [1973] 3 W.L.R. 198.
73. See para. 51.

VI. SUMMARY OF PROPOSALS

73. A summary of our provisional proposals upon which we seek views is as follows -

(1) The Forcible Entry Acts 1381-1623 should be repealed, and the common law offences of forcible entry and detainer and conspiracy to trespass, as defined in Kamara v. D.P.P.[74] should be abolished (paragraphs 68-72).

(2) In place of the offences repealed and abolished there should be two new offences, namely -

(a) Without lawful authority entering property by force adversely to any person in physical occupation of it, or entitled to occupy it, and

(b) Being unlawfully on property and failing to leave as soon as reasonably practicable after being ordered to leave by a person entitled to occupation (paragraph 35).

The offences should carry maximum penalties of imprisonment for 2 years and 6 months respectively, with the police having a power of arrest where they have reasonable grounds for believing that an offence has been committed (paragraph 65).

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74. [1973] 3 W.L.R. 198.

(3) In regard to the proposed entry offence -

(a) Any forcible entry for any purpose without lawful authority, even by a person with a right of occupation should be sufficient (paragraphs 38 and 39).

(b) "Property" should include, as well as land and buildings, any inhabited vehicle or vessel (paragraph 40).

(c) "Force" should be defined as any application or display of force, or an immediate threat to apply force, which would be likely to dissuade a person of reasonable fortitude,for fear of violence to his person, from offering lawful resistance (paragraph 42).

(d) The property should be physically occupied by another at the time of forcible entry or another should have the right of occupation (paragraph 45).

(e) The defendant must intend to act against the will of the person in physical occupation, or, where there is no person in physical occupation, against the will of the person with a right of occupation (paragraph 45).

(4) In regard to the proposed offence of remaining on property -

(a) Presence on the property must be unlawful and a genuine belief in a

legal right to be there should be a defence (paragraphs 58-59).

(b) The order to leave must be given by a person entitled to occupation (or under his authority), and this must be made clear to the defendant (paragraph 61).

(c) The person must leave as soon as reasonably practicable after the order to leave (paragraph 63).

(d) It should not apply to tenants remaining on after the expiry of a lease, nor to those who have been sharing another's residential accommodation (paragraph 53),

(e) We seek views on whether it should not apply to -

(i) those who have been living on the premises for 14 days; or, alternatively, to those who are living on the premises unless the person entitled to occupation of the premises requires them for immediate use (paragraph 54), or

(ii) persons who remain on property without substantially interfering with its use (paragraph 55).

APPENDIX

THE FORCIBLE ENTRY ACT 1381

...None from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. And if any man from henceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment...

THE STATUTE OF FORCIBLE ENTRY 1391

...The ordinances and statutes, made and not repealed, of them that make entries with strong hand into lands and tenements, or other possessions whatsoever, and them hold with force, and also of those that make insurrections, or great ridings, riots, routs, or assemblies, in disturbance of the peace, or of the common law, or in affray of the people, shall be holden and kept, and fully executed; joined to the same, that at all times that such forcible entry shall be made, and complaint thereof cometh to the justices of peace, or to any of them, that the same justices or justice take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly after such entry made, they shall be taken and put in the next goal, there to abide convict by the record of the same justices or justice, until they have made fine and ransom to the King: and that all the people of the county, as well the sheriffs as other, shall be attendant upon the same justices to go and assist the same justices to arrest such offenders, upon pain of imprisonment, and to make fine to the King. And in the same manner it shall be done of them that make such forcible entries in benefices or offices of Holy Church.

THE FORCIBLE ENTRY ACT 1429

...The said statute, and all other statutes of such entries or alienations made in times past, shall be holden and duly executed; joined to the same, that from henceforth where any doth make any forcible entry in lands and tenements or other possessions, or them hold forcibly, after complaint thereof made within the same county where such entry is made, to the justices of peace, or to one of them, by the party grieved, that the justices or justice so warned, within a

convenient time shall cause, or one of them shall cause, the said statute duly to be executed, and that at the costs of the party so grieved; and moreover though that such persons making such entry be present, or else departed before the coming of the said justices or justice, notwithstanding the same justices or justice in some good town next to the tenements so entered, or in some other convenient place, according to their discretion, shall have, or either of them shall have, authority and power to inquire by the people of the same county, as well of them that make such forcible entries in lands and tenements, as of them which the same hold with force; and if it be found before any of them, that any doth contrary to this statute, then the said justices or justice shall cause to reseise the lands and tenements so entered or holden as afore, and shall put the party so put out in full possession of the same lands and tenements so entered or holden as before; ....And also when the said justices or justice make such inquiries as before, they shall make, or one of them shall make, their warrants and precepts to be directed to the sheriff of the same county, commanding him of the King's behalf to cause to come before them, and every of them, sufficient and indifferent persons, dwelling next about the lands so entered as before, to inquire of such entries;...And if any sheriff, or bailiff within a franchise having return of the King's writ, be slack, and make not execution duly of the said precepts to him directed to make such inquiries, that he shall forfeit to the King xx li. for every default...And that as well the justices... aforesaid, as the justices of assises, and every of them, at their coming into the country to take assises, shall have, and every of them shall have power to hear and determine such defaults and negligences of the said sheriffs and bailiffs, and every of them, as well by bill at the suit of the party grieved for himself as for the King to sue by indictment only to be taken for the King; and if the sheriff or bailiff be duly attainted in this behalf by indictment, or by bill, that he which sueth for himself and for the King have the one moiety of the forfeiture of xx li. together with his costs and expenses; and that the same process be made against such persons indicted or sued by bill in this behalf, as should be against persons indicted or sued by writ of trespass done with force and arms against the peace of the King. And moreover, if any person be put out, or disseised of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand, or after such entry, any feoffment or discontinuance in any wise thereof be made, to defraud and take away the right of the possessor, that the party grieved in this behalf shall have assise of novel disseisin, or a writ of trespass against such disseissor; and if the party grieved recover by assise, or by action of trespass, and it be found by verdict, or in other manner by due form in the law, that the party defendant entered with force into the lands and tenements, or them after his entry did hold with force, that the plaintiff shall recover his treble damages against the defendant;...And that mayors, justices or justice of peace,

sheriffs, and bailiffs of cities towns and boroughs, having franchise, have in the said cities, towns and boroughs, like power to remove such entries, and in other articles aforesaid, rising within the same, as the justices of peace and sheriffs in counties and countries aforesaid have. Provided always, that they which keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements have continued their possessions in the same by three years or more, be not endamaged by force of this statute.

THE FORCIBLE ENTRY ACT 1588

...No restitution upon any indictment of forcible entry or holding with force, be made to any person or persons, if the person or persons so indicted have had the occupation, or have been in quiet possession, by the space of three whole years together, next before the day of such indictment so found, and his her or their estate or estates therein not ended nor determined; which the party indicted shall and may allege for stay of restitution, and restitution to stay until that be tried, if the other will deny or traverse the same; and if the same allegation be tried against the same person or persons so indicted, then the same person or persons so indicted to pay such...damage to the other party, as shall be assessed by the judge or justice before whom the same shall be tried, the same...damage to be recovered and levied as is usual for... damage contained in judgment upon other actions.

THE FORCIBLE ENTRY ACT 1623

...Such judges justices or justice of the peace, as by reason of any Act or Acts of Parliament now in force, are authorised and enabled upon enquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements, which shall be entered upon with force, or from them withholden by force, shall by reason of this present Act have the like and the same authority and ability...upon indictment of such forcible entries or forcible withholding before them duly found, to give like restitution of possession unto tenants for term of years,...of lands or tenements by them so holden, which shall be entered upon by force or holden from them by force.

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